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OFFICE OF ADMINISTRATIVE LAW

2008 OAL DETERMINATION NO. 31
(OAL FILE NO. CTU 2008-0521-01)

John Patton
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CHIEF OF OFFICE

REQUESTED BY: Marc Anthony Lowell Endsley

CONCERNING: Administrative Directive No. 15.16, issued by Patton State Hospital, Department of Mental Health, regarding restrictions on patients' mail, allowable property, and disposition of contraband.

**DETERMINATION ISSUED PURSUANT TO
GOVERNMENT CODE SECTION 11340.5.**

SCOPE OF REVIEW

A determination by the Office of Administrative Law (OAL) evaluates whether or not an action or enactment by a state agency complies with California administrative law governing how state agencies adopt regulations. Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. Our review is limited to the sole issue of whether the challenged rule meets the definition of a "regulation" as defined in Government Code section 11342.600¹ and is subject to the Administrative Procedure Act (APA). If a rule meets the definition of a regulation, but was not adopted pursuant to the APA and should have been, it is an "underground regulation" as defined in California Code of Regulations,² title 1, section 250.³ OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

FACTUAL BACKGROUND

On May 21, 2008, Marc Anthony Lowell Endsley (Petitioner) submitted a petition to OAL challenging an administrative directive issued by the Department of Mental Health (Department) as an underground regulation. Specifically, Petitioner challenges

¹ Unless otherwise specified, all references are to the Government Code.

² Unless otherwise specified, all regulations are to the California Code of Regulations and will be cited by title and section numbers.

³ As defined by title 1, section 250(a), an

"Underground regulation" means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

Administrative Directive No. 15.16 (AD 15.16),⁴ Allowable Items/Contraband, which was issued by Patton State Hospital (Patton), a state hospital under the jurisdiction of the Department. AD 15.16 was issued by the Executive Director of Patton and became effective on November 15, 2006. Petitioner alleges that AD 15.16 meets the definition of a “regulation” that should have been adopted pursuant to the APA.

Patton houses mental health patients under both civil and forensic commitments. Patton is one of two state hospitals required to house mentally disordered “patients determined [by the Department] to be high security risk patients.” (Welf. & Inst. Code, sec. 7230.) Accordingly, a portion of the Patton patient population is high security risk patients. Patton’s patient population includes civil commitments under the Lanterman-Petris-Short (LPS) Act (Welf. & Inst. Code, sec. 5000 et seq.) and the Sexually Violent Predator Act (SVPA) (Welf. & Inst. Code, sec. 6600 et seq.). The portion of Patton’s patient population that are forensic commitments are placed or committed under Penal Code sections 702.3, 1026, 1370, 1370.1, 1372, 1610, 2684, 2962, 2964(a), 2972, 2974, and 6316.⁵

On June 23, 2008, OAL accepted the petition, which was published in the California Regulatory Notice Register on July 4, 2008. The Department submitted a formal response on August 18, 2008. Petitioner did not submit a rebuttal response and OAL received no public comments to this petition.

CHALLENGED RULE

The purpose of AD 15.16 sets forth restrictions on access and possession of all patient⁶ property identified as contraband, how patients can acquire non-contraband, “allowable” property through specified vendors, and includes controls on patient mail and patient funds.⁷

AD 15.16 provides definitions of its terms and specifies required Patton personnel actions related to the restrictions and controls on contraband and patient mail. The following are examples of the provisions in AD 15.16:

- Requirement that all incoming packages be opened and searched for contraband.
- Requirement that all incoming and outgoing mail correspondence be opened and searched if suspected of containing contraband.
- Requirement that the patient may order items only from approved vendors.

⁴ See Exhibit 1 for a copy of AD 15.16.

⁵ According to the Department’s website describing Patton’s patient population, viewed on October 16, 2008. (http://www.dmh.ca.gov/Services_and_Programs/State_Hospitals/Patton/Legal_Commitments.asp.) The Penal Code sections that apply to Patton forensic commitments generally apply to criminal defendants determined by courts to be incompetent to stand trial or who plead not guilty by reason of insanity, or to inmates or parolees committed under order for psychiatric treatment.

⁶ AD 15.16 refers to Patton patients as “Individuals.” We use the term “patients” for consistency with the Department’s regulations and the Welfare and Institutions Code.

⁷ AD 15.16 applies to all packages received for all patients, not to just high security risk patients.

- Definitions of “Contraband,” “Controlled Items,” “Factory Sealed,” “Vendor,” and “Patient Clothing & Property Card.” Many of these definitions are further defined in the directive.
- Requirement for Patton personnel to track and record all incoming mail and packages, to open all mail subject to the AD 15.16 contraband requirements, restrictions and controls, and to allow patients to open “allowable” packages in presence of designated Patton staff.
- Requirement that property only be acquired directly from an approved vendor, which excludes family or friends.⁸
- Criteria for identifying contraband and examples of items or packaging that constitute contraband in accordance with the directive.
- Disposition of contraband at patient’s option: Item is donated, destroyed or, at patient’s expense, forwarded to addressee designated by patient.
- Requirement for patients to sign a “Lost/Damaged Personal Property Liability Waiver” form for items valued at \$100 or more.
- Requirement that a patient’s possession of more than \$15.00 constitutes contraband funds, and confiscation and disposition of such funds.
- Procedures and restrictions on storage and access of allowable property, including size and space limitations.
- Restrictions on access to allowed but supervised and controlled items and related supervisory responsibilities of designated Patton personnel.
- Requirement to confiscate all items not on the “allowed list” or otherwise constituting contraband, including contraband funds.
- Prohibition on selling, trading, or giving any property between patients.
- Prohibition on the receipt of packages through the Patton Visiting Center.
- Procedures for patients to request exceptions to prohibited property and to amend the allowable property list.
- Procedure to amend the allowable property list.

AD 15.16 includes as many as eight attachments that are incorporated by reference in its provisions. Petitioner only submitted Attachments A and B, both of which provide further limitations and instructions in relation to the AD 15.16 restrictions and controls on patient property. Attachment A, (also titled “Allowable Items/Contraband”⁹), lists specific items of “Approved Items” cross-referenced by the source of each type of listed property, Patton personnel “monitoring requirements,” and specific requirements¹⁰ related to each type of property and its source. Attachment B, titled “Suggested Vendors Providing Mail Order Services,” provides names, addresses, telephone numbers and web site information for approximately 40 vendors.

⁸ We note that patients may acquire property from family or friends as an “approved source” pursuant to policy #12 in AD 15.16 and in the attached “Allowable Items/Contraband” list (Attachment A to AD 15.16) in limited circumstances. However, the AD 15.16 vendor definition expressly excludes family and friends as a vendor.

⁹ Attachment A is also referred to as attached “guidelines” or “list” in the directive.

¹⁰ These requirements are under the heading, “Comments (Information on limits, containers, etc.)”, but clearly specify requirements depending on type of property and its source.

DETERMINATION

OAL determines that AD 15.16 meets the definition of a "regulation" as defined in Government Code section 11342.600 that should have been adopted pursuant to the APA.

AGENCY RESPONSE

On August 18, 2008, OAL received a response from the Department. The Department argues that AD 15.16 does not meet the definition of a regulation for the following reasons:

1. AD 15.16 is not a regulation. Instead, the AD is a guide to the staff at Patton of allowable items at the facility, contraband, and property received by mail.
2. AD 15.16 does not apply generally and does not "implement, interpret, or make specific" any statute. It is not quasi-legislative.
3. AD 15.16 restates state law and regulation.
4. AD 15.16 is exempt from the APA because it falls under the "internal management" exception.
5. AD 15.16 is exempt from the APA by a regulation, title 9, California Code of Regulations, section 884, which was adopted in compliance with the APA.
6. AD 15.16 should be viewed as permissive safety and security measures, due to the existence of high security risk patients and issues of safety and security related to all patients and to Patton staff. Patton should be allowed to create policy based on the situation specific to the facility, and AD 15.16 addresses safety and security issues specific to Patton.
7. The issuance of AD 15.16 is similar to a "local rule" issued by a state prison and exempted from the APA by Penal Code section 5058.
8. AD 15.16 is constitutionally permissible.

UNDERGROUND REGULATIONS

Section 11340.5, subdivision (a), prohibits state agencies from issuing rules unless the rules comply with the APA:

(a) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in [Government Code] Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to [the APA].

When an agency issues, utilizes, enforces, or attempts to enforce a rule in violation of section 11340.5 it creates an underground regulation as defined in California Code of Regulations, title 1, section 250.

OAL may issue a determination as to whether or not an agency issued, utilized, enforced, or attempted to enforce a rule that meets the definition of a "regulation" as defined in section Government Code 11342.600 that should have been adopted pursuant to the APA. An OAL determination that an agency has issued, utilized, enforced, or attempted to enforce an underground regulation is not enforceable against the agency through any formal administrative means,¹¹ but it is entitled to "due deference" in any subsequent litigation of the issue pursuant to *Grier v. Kizer* (1990) 219 Cal.App.3d 422 [268 Cal.Rptr. 244].

To determine whether an agency issued, utilized, enforced, or attempted to enforce an underground regulation in violation of Government Code section 11340.5, it must be demonstrated that the agency rule is a "regulation" and not exempt from the APA.

ANALYSIS

Patton is a state mental health hospital under the jurisdiction of the Department. (Welf. & Inst. Code, sec. 4100.) Patton, like other state mental hospitals, has limited authority to act as an independent entity. The responsibility of governing all state mental hospitals lies with the Department. Welfare and Institutions Code section 4101 provides that:

[A]ll of the institutions under the jurisdiction of the State Department of Mental Health shall be governed by uniform rule and regulation of the State Department of Mental Health....

Additionally, Welfare and Institutions Code section 4100 states:

The department [of Mental Health] has jurisdiction over the following institutions: ...

(e) Patton State Hospital.

A determination of whether the challenged rule is a "regulation" subject to the APA depends on (1) whether the challenged rule is a "regulation" within the meaning of Government Code section 11342.600, and (2) whether the challenged rule falls within any recognized exemption from APA requirements.

A regulation is defined in Government Code section 11342.600 as:

[E]very rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

¹¹ We note that the Department's response included a request that, if OAL finds that AD 15.16 does meet the definition of a regulation, that OAL allow the Department to continue use of AD 15.16 until regulations can be promulgated to avoid significant disruptions at Patton and to ensure the safety and security of the patients and staff at Patton. OAL has no power to compel the Department to discontinue use of AD 15.16. Such an order must be made by a court of competent jurisdiction.

In *Tidewater Marine Western, Inc. v. Victoria Bradshaw* (1996) 14 Cal.4th 557, 571 [59 Cal.Rptr.2d 186], the California Supreme Court found that:

A regulation subject to the Administrative Procedure Act (APA) (Gov. Code, §11340 et seq.) has two principal identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. Second, the rule must implement, interpret, or make specific the law enforced or administered by the agency, or govern the agency's procedure (Gov. Code, §11342, subd. (g)).¹²

The first element of a regulation is whether the rule applies generally. AD 15.16 applies to all Patton patients who send or receive mail or packages, to family and friends of all Patton patients and vendors who send or receive mail or packages to any Patton patient, to all vendors from whom Patton patients might acquire property, and to Patton staff. As *Tidewater* points out, a rule need not apply to all persons in the state of California. It is sufficient if the rule applies to a clearly defined class of persons or situations. Patients committed to Patton, their family and friends, employees of Patton, and vendors are clearly defined classes of persons. The first element is, therefore, met.

The second element established in *Tidewater* is that the rule must implement, interpret or make specific the law enforced or administered by the agency, or govern the agency's procedure. The "law enforced or administered by the agency" also applies when an agency rule implements, interprets or makes specific its own regulations.

As noted above, Welfare and Institutions Code section 4100 states that the Department has jurisdiction over Patton, and Welfare and Institutions Code section 4101 requires all of the institutions under the jurisdiction of the Department be governed by uniform rule and regulation of the Department. AD 15.16 establishes requirements, restrictions, and controls on access and possession of patient property identified as contraband, how patients may acquire non-contraband, "allowable" property through specified vendors, and includes controls on patient mail and patient funds. AD 15.16, therefore, implements Welfare and Institutions Code sections 4100 and 4101 which deal with the Department's responsibilities to adopt regulations to govern state hospitals.

Additionally, AD 15.16 implements, interprets or makes specific the Department's own regulations in title 9, section 884. For example, title 9, section 884(b) provides:

(b) Non-LPS Patients have the following rights, subject to denial for good cause:

(1) A right to keep and use personal possessions as space permits, *except items and materials that are listed as contraband by the facility.*

...

¹² Section 11342(g) was re-numbered to section 11342.600 in 2000 without substantive change.

(7) A right to receive packages. Designated facility employees shall open and inspect all incoming and outgoing packages addressed to and from patients for contraband. Limitations on the size, weight and volume, and frequency/number of packages allowed shall be *specified by formal facility policy*. (Emphasis added.)

By establishing requirements, restrictions, and controls on access and possession of patient property, AD 15.16 implements, interprets or makes specific title 9, section 884, the regulations administered and enforced by the Department, in the same manner that it implements Welfare and Institutions Code sections 4100 and 4101. The second element in *Tidewater* is, therefore, met. Having met both elements of *Tidewater*, OAL determines that AD 15.16 meets the definition of “regulation” in Government Code section 11342.600.

The final issue to examine is whether AD 15.16 falls within an exemption from the APA. Government Code section 11346 requires that an exemption from the APA must be an express statutory exemption. We find no express APA exemptions that would apply to AD 15.16.

AGENCY RESPONSE

In its response, the Department makes several arguments for finding that AD 15.16 does not meet the definition of a regulation. We will address each argument in turn.

1. AD 15.16 is not a regulation. Instead, the AD is a guide to the staff at Patton of allowable items at the facility, contraband, and property received by mail.

Government Code section 11340.5 specifically prohibits guidelines that meet the definition of “regulation.” Government Code section 11340.5 states:

- (a) No state agency shall issue, utilize, enforce, or attempt to enforce any *guideline*, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter. (Emphasis added.)

AD 15.16, as determined above, meets both the elements of *Tidewater* and, therefore, meets the definition of “regulation.”

Furthermore, the designation of a challenged rule as a “guide” is not dispositive of the challenged rule’s true nature. In *State Water Resources Control Board v. OAL* (1993) 12 Cal.App.4th 697, 702 [16 Cal.Rptr.2d 25], the Court held:

The Legislature established the OAL as a central office with the power and duty to review administrative regulations. The Legislature expressed

its reasons in no uncertain terms stating, in essence, that it was concerned with the confusion and uncertainty generated by the proliferation of regulations by various state agencies, and that it sought to alleviate these problems by establishing a central agency with the power and duty to review regulations to ensure that they are written in a comprehensible manner, are authorized by statute and are consistent with other law. (Gov. Code, §§ 11340, subd. (e), and 11340.1.) In order to further that function, the relevant Government Code sections are careful to provide OAL authority over regulatory measures whether or not they are designated “regulations” by the relevant agency. *In other words, if it looks like a regulation, reads like a regulation, and acts like a regulation, it will be treated as a regulation whether or not the agency in question so labeled it.* (Emphasis added.)

Thus, the fact that the Department asserts that the challenged AD is a “guide” does not keep it from being found to be a “regulation,” and subsequently subject to the APA, as OAL concluded above.

2. AD 15.16 does not apply generally and does not “implement, interpret, or make specific” any statute. It is not quasi-legislative.

As noted above, the *Tidewater* case does not require that all persons in the state be affected by the rule. Rather, it is enough that the rule apply to a clearly defined class of persons. AD 15.16 is a rule that applies generally because it declares how a certain open classes of cases will be decided, those involving Patton patients, their family, friends, and correspondents, vendors, and Patton staff.

As discussed above, AD 15.16 implements, interprets, or makes specific Welfare and Institutions Code sections 4100 and 4101, which give authority to the Department to adopt regulations for Patton.

Finally, AD 15.16 is “quasi-legislative.” *Tidewater* states:

A written statement of policy that an agency intends to apply generally, that is unrelated to a specific case, and that predicts how the agency will decide future cases is essentially legislative in nature even if it merely interprets applicable law.¹³

Among other requirements, AD 15.16 limits how Patton patients may acquire property, and requires that all packages be searched for contraband and logged. The Department intends AD 15.16 to apply generally to patients and their families and friends. AD 15.16 states how the Department will decide all future handling of mail received or sent by patients. Therefore, it is quasi-legislative action on the part of the Department and is subject to the APA.

¹³ *Tidewater, supra*, at 574-575.

3. AD 15.16 restates state law and regulation.

The Department's response states that AD 15.16 is a restatement of general case law decisions for searching patient mail for contraband, essentially based on a governmental interest involved in ensuring the security and safety of the patients, staff, and community at a high security facility such as Patton. (See Department response, p. 4.) The Department did not provide the case law nor did the Department provide legal citations to demonstrate how AD 15.16 is a restatement of this general case law. Further, OAL did not find any law to support this argument.

The Department's response argues that, based on the general case law, it has the authority and the necessity for having rules that govern patient's property and mail. OAL does not dispute that the Department has the authority and the necessity to adopt rules that govern patient's property and mail. And, a state agency must meet the "authority" and "necessity" standards (Gov. Code, secs. 11349 and 11349.1) when adopting regulations. However, these standards do not come into play when determining whether a challenged rule is an underground regulation. Rather, the sole issue is whether the challenged rule meets the definition of a "regulation" as defined in Government Codes section 11342.600 and is subject to the APA.

The Department further argues that AD 15.16 is a restatement of its own regulations, in title 9, section 884, subdivisions (b)(6) and (b)(7),¹⁴ which provide:

(b) Non-LPS Patients have the following rights, subject to denial for good cause:

...

(6) A right to have access to letter writing materials and to mail and receive correspondence. Designated facility employees shall open and inspect all incoming and outgoing mail addressed to and from patients for contraband. Confidential mail, as defined in Section 881(c), shall not be read. Limitations on size, weight and volume of mail shall be specified by formal facility policy.

(7) A right to receive packages. Designated facility employees shall open and inspect all incoming and outgoing packages addressed to and from patients for contraband. Limitations on the size, weight and volume, and frequency/number of packages allowed shall be specified by formal facility policy.

The Department argues that the AD 15.16 provisions for opening and searching patient mail for contraband is a restatement of law. Specifically, it is a restatement of "[d]esignated facility employees shall open and inspect all incoming and outgoing mail addressed to and from patients for contraband," found in both of the above-cited subdivisions of title 9, section 884.

¹⁴ The Department erroneously cites subdivisions (a)(6) and (a)(7) of title 9, section 884. The relevant subdivisions to title 9, section 884 are (b)(6) and (b)(7).

If all AD 15.16 established was the above-quoted language in the subdivisions of title 9, section 884, either verbatim or in similar terms, the provisions for opening and searching patient mail for contraband would be a restatement of law. However, AD 15.16 goes further than this as shown in the examples above. For example, AD 15.16 sets forth the type of package that will be searched for contraband in all cases based on the source of the package or on the type of packaging used.

Additionally, title 9, section 884 applies entirely to non-LPS patients. Patton's patient population includes LPS commitments. The Department did not cite any law demonstrating how AD 15.16 restates law applicable to LPS commitments.

Similarly, the Department's response to the entirety of AD 15.16 relies on the fact that Patton has statutory responsibility over "high security risk patients" under Welfare and Institutions Code section 7230. While it is likely that some civil and forensic commitments at Patton pose a security risk, not all such patients are "high security risk patients" under Welfare and Institutions Code section 7230.¹⁵ It is also likely that a substantial portion of the Patton patient population pose no security risk at all. Notwithstanding, the Department did not cite any law to show how AD 15.16 or its provisions are a restatement of law applicable to the Patton patient population, regardless of any security risk posed by its patients.

The Department also argues that language in title 9, section 884(b)(1), combined with the definition of contraband in title 9, section 881(e), allows Patton "to create their own list and policies and procedures depending on the facility" such that AD 15.16 is a restatement of law. (See Department response, p. 4.) Similar to the above analysis, if all AD 15.16 established was the same definition of contraband in title 9, section 881(e), either verbatim or in similar terms, it would be a restatement of law. However, AD 15.16 goes further than this for the same reasons explained above.

The Department's reliance on language in title 9, section 884(b)(1) also fails to support AD 15.16 as a restatement of law. This section provides:

(b) Non-LPS Patients have the following rights, subject to denial for good cause:

(1) A right to keep and use personal possessions as space permits, except items and materials that are listed as contraband by the facility. Each facility shall make a copy of the contraband listing available on all treatment units and public areas within the facility. Each patient shall receive a copy of the contraband listing upon admission.

¹⁵ High security risk patients under Welfare and Institutions Code section 7230 are determined by the Department pursuant to Welfare and Institutions Code section 7228, which only applies to forensic commitments under Penal Code sections 1026 and 1370. Not all forensic commitments under these sections are necessarily "high security risk patients." Moreover, commitments under these sections comprise only a small portion of Patton's forensic patient population. Patton's patient population include forensic commitments that are committed under other Penal Code sections, as well as LPS and SVPA civil commitments pursuant to Welfare and Institutions Code section 5000 et seq. (Lanterman-Petris-Short Act) and section 6600 et seq. (Sexually Violent Predator Act).

If AD 15.16 provided the above-quoted language from title 9, section 884(b)(1) or used similar terms, it would be a restatement of law. However, AD 15.16 goes further than this as shown in the examples of its provisions and, accordingly, is not a restatement of title 9, section 884(b)(1).

Accordingly, the AD 15.16 provisions are not mere restatements of law. They meet the definition of “regulation” and should have been adopted pursuant to the procedures in the APA.

4. AD 15.16 is exempt from the APA because it falls under the “internal management” exception.

Government Code section 11340.9 (d) exempts from compliance with the APA any rule that “relates only to the internal management of the state agency.” This exemption from the APA has been construed very narrowly. The California Court of Appeal in *Grier v. Kizer* summarizes case law on internal management, stating:

Armistead v. State Personnel Board [citation] determined that an agency rule relating to an employee’s withdrawal of his resignation did not fall within the internal management exception. The Supreme Court reasoned the rule was ‘designed for use by personnel officers and their colleagues in the various state agencies throughout the state. It interprets and implements [a board rule]. It concerns termination of employment, a matter of import to all state civil service employees. It is not a rule governing the board’s internal affairs. [Citation.] “Respondents have confused the internal rules which may govern the department’s procedure . . . and the rules necessary to properly consider the interests of all . . . under the . . . statutes . . .” [Fn. omitted.] . . . [Citation; emphasis added by *Grier* court.]

Armistead cited *Poschman v. Dumke* [citation], which similarly rejected a contention that a regulation related only to internal management. The *Poschman* court held: “Tenure within any school system is a matter of serious consequence involving an important public interest. The consequences are not solely confined to school administration or affect only the academic community.” . . . [Citation.]

Relying on *Armistead*, and consistent therewith, *Stoneham v. Rushen* [citation] held the Department of Corrections’ adoption of a numerical classification system to determine an inmate’s proper level of security and place of confinement ‘extend[ed] well beyond matters relating solely to the management of the internal affairs of the agency itself [,]’ and embodied ‘a rule of general application significantly affecting the male prison population’ in its custody.

By way of examples, the above mentioned cases disclose that the scope of the internal management exception is narrow indeed. This is underscored by *Armistead*’s holding that an agency’s personnel policy was a regulation

because it affected employee interests. Accordingly, even internal administrative matters do not per se fall within the internal management exception¹⁶

The internal management exemption has been judicially determined to be narrow in scope.¹⁷ The courts apply the internal management exemption if the “regulation” at issue (1) affects only the employees of the issuing agency,¹⁸ and (2) does not address a matter of serious consequence involving an important public interest.¹⁹ In order for a rule or procedure to fall within the internal management exemption, it must meet both of these two prongs.

AD 15.16 fails to meet the first prong. AD 15.16 affects more than employees of the Department. It also affects Patton patients, their family, friends, and correspondents, and vendors.²⁰ Therefore AD 15.16 does not fall within the internal management exemption.

5. AD 15.16 is exempt from the APA by a regulation, title 9, California Code of Regulations, section 884, which was adopted in compliance with the APA.

The Department argues that the plain language in of title 9, section 884 provides “specific exemptions” that allows each facility to determine policy addressing individual needs of the facility, such that certain provisions of AD 15.16 are exempt from the APA. Since these title 9 regulations were adopted in compliance with the APA, they are legally valid exemptions to the APA that allow state hospitals to adopt additional regulations within the scope of the specific exemption. (Department response, pp. 4 and 5) The following provisions are examples of language from title 9, section 884 that the Department relies on:

- “Each facility shall make a copy of the contraband listing available on all treatment units and public areas within the facility” (title 9, section 884(b)(1).)
- “Limitations on size, weight and volume of mail shall be specified by formal facility policy.” (Title 9, section 884(b)(6).)

The Department argues that the plain language in of title 9, section 884(b)(1) allows any state mental hospital “to create their own list and policies and procedures depending on the facility,” such that AD 15.16 is exempt from the APA. (Department response, p. 4.) Similarly, the plain language in of title 9, section 884(b)(6) allows any state mental hospital “in regards to the limitation of size, weight, and volume, the facility is allowed to create a policy based on the situation of the facility such as patient property, space, the

¹⁶ *Grier v. Kizer*, *supra*, at 436.

¹⁷ *Id.*

¹⁸ See *Armistead v. State Personnel Board* (1978) 22 Cal.3d 198, 149 Cal.Rptr. 1; *Stoneham v. Rushen* (*Stoneham I*) (1982) 137 Cal.App.3d 729, 188 Cal.Rptr. 130; *Poschman v. Dumke* (1973) 31 Cal.App.3d 932, 107 Cal.Rptr. 596.

¹⁹ See *Poschman*, *supra*, 31 Cal.App.3d at 943, 107 Cal.Rptr. at 603; and *Armistead*, *supra*, 22 Cal.3d at 203-204, 149 Cal.Rptr. at 3-4.

²⁰ Because AD 15.16 does not meet the first prong of the “internal management” exemption, there is no need to discuss or analyze the second prong.

capabilities of the facility, and safety and security of the facility.” (Department response, p. 5.)

Such an interpretation of this or similar language is prohibited by the plain language of the APA, which exempts state agencies from APA requirements “only to the extent the *legislation* shall do so expressly.” (Government Code section 11346; emphasis added.) Contrary to the Department’s arguments, such an interpretation of agency’s own regulations would meet the definition of a regulation under the two-part *Tidewater* test discussed above, requiring compliance with the APA. Agencies can only accomplish an exemption from the APA through legislation. Accordingly, neither the above-cited examples in title 9, section 884 exempts AD 15.16 from the APA.

6. AD 15.16 should be viewed as permissive safety and security measures, due to the existence of high security risk patients and issues of safety and security related to all patients and to Patton staff. Patton should be allowed to create policy based on the situation specific to the facility, and AD 15.16 addresses safety and security issues specific to Patton.

OAL sympathizes with the need to ensure the safety and security of the state hospitals and the people who live and work there. However, this determination is limited to the single issue of whether AD 15.16 meets the definition of a regulation. We have no authority to create an exemption from the APA based upon the situation found in state hospitals. That is the purview of the Legislature.

7. The issuance of AD 15.16 is similar to a “local rule” issued by a state prison and exempted from the APA by Penal Code section 5058.

In Penal Code section 5058(c), the Legislature established an exemption to the APA, the “local rule” exemption, applicable only to individual prisons and correctional facilities under the jurisdiction of Department of Corrections and Rehabilitation (Corrections). Penal Code section 5058(c) provides in pertinent part:

The following are deemed not to be "regulations" as defined in Section 11342.600 of the Government Code:

- (1) Rules issued by the director [of Corrections] *applying solely to a particular prison or other correctional facility....* (Emphasis added.)

The express terms of Penal Code section 5058(c) clearly apply only to prisons and correctional facilities under the jurisdiction of Corrections, and accordingly do not apply to state hospitals under the jurisdiction of the Department. Penal Code section 5058(c) was enacted by the Legislature in recognition that each prison or correctional facility under the jurisdiction of Corrections may have conditions unique to that prison. In such cases, the individual prison or correctional facility may adopt rules to address those conditions without following the requirements of the APA. The situation that the Department faces is very similar to that of Corrections. However, OAL does not have the authority to apply to the Department a statute that specifically applies only to prisons or correctional facility under the jurisdiction of Corrections. This is a decision that must be made by the Legislature.

The Department cites Welfare and Institutions Code section 4107, which gives authority to Corrections over the security of certain patient commitments to Patton. Essentially, the Department argues that the Penal Code section 5058 "local rule" exemption should apply because, under Welfare and Institutions Code section 4107,

[Corrections] is actually responsible for packages coming in [to Patton]. The integrity and security of [Patton's] compound perimeters is the responsibility of the California Department of Corrections and Rehabilitation, as well as other specific areas including the package room. The package room receives the mail and packages that are being received. [Corrections] also manages the visitation room and what is permissible into the facility. (Department response, p. 6.)

Our review of Welfare and Institutions Code section 4107 and other sections in the same chapter confirms that Corrections has some amount of jurisdiction and authority related to security at Patton. However, nothing in these sections provides express statutory language for applying the "local rule" exemption under Penal Code section 5058(c). State hospitals are under the jurisdiction of the Department and OAL does not have authority to extend the "local rule" exemption to them for the reasons state above.

8. AD 15.16 is constitutionally permissible.

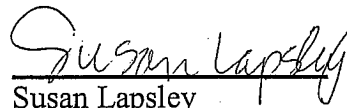
The Department argues that, pursuant to *Martyr v. Mazur-Hart* (1992) 789 F. Supp. 1081, forensic patients at state mental hospitals do not have a right for their mail or packages to received free of searches for contraband.

The constitutionality of the provisions of AD 15.16 and whether the patients do or do not have specific rights is not determinative of whether AD 15.16 is an underground regulation. The sole issue is whether the challenged rule meets the definition of "regulation" as defined in Government Code section 11342.600 and is subject to the Administrative Procedure Act.

CONCLUSION

OAL finds that AD 15.16 is a "regulation" as defined in section 11342.600, does not fall within any express statutory APA exemption, and therefore, it should have been adopted pursuant to the APA.

Date: October 31, 2008


Susan Lapsley
Director

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Staff Counsel

EXHIBIT 1

AD 15.16



ADMINISTRATIVE DIRECTIVE

#15.16
ALLOWABLE ITEMS/CONTRABAND
NOVEMBER 15, 2006
(Implementation date)
(Replaces 15.16 dated 10/01/05)
COMPLETE REVISION
NUMBER OF PAGES: 7

with attachments

RESPONSIBILITY: CLINICAL ADMINISTRATOR

APPROVED (10/27/06):

[Signature]
OCTAVIO C. LUNA
EXECUTIVE DIRECTOR

PURPOSE:

The intent of this policy is to identify those items Individuals receiving services at Patton State Hospital (PSH) may have access to or keep in their possession; items which may require staff supervision; how items may be mailed in or purchased through hospital Canteen; the control of correspondence and mail; and the controls on contraband funds and property.

POLICY:

1. The Individuals receiving services at PSH are allowed to have in their possession specified personal and state property, which does not impede the safety and security of the hospital.
2. The allowable items (with the exception of consumable items) shall be listed on the Client's Clothing and Property Card (PSH 7328), which will be placed in a binder and kept in the Nursing Station of each unit. All staff, Individuals and visitors will adhere to this policy.
3. Individuals will be allowed to utilize the computer in the Individual's Library with their personal media sources (Compact Disks/DVD's, Floppy Disks, Cartridge or Cassette Tapes). Each unit shall establish a policy regarding the Individuals use of the unit state equipment (computer, DVD player) to access their personal media sources.

AUTHORITY: Special Order 239.02 - Contraband

DEFINITIONS:

Contraband:	Items, which Individuals are not allowed to be in possession of.
Controlled Items:	Items (see Attachment A) which require the following: <ul style="list-style-type: none">• Review by the Individual's Wellness and Recovery Team (WRT) prior to the Individual receiving the item as personal property.• Checked out to the Individual and are to be utilized by the Individual for the intended purpose and are not altered.• Returned, by the Individual, to the nursing station prior to the hour of sleep on the same day.
Supervised Items:	Materials and tools, which will be used under the direct supervision of treatment staff only. Direct supervision requires that staff observe the use of said item(s).
Factory Sealed:	Items sealed in such a way that the items inside are accessible only by destroying the permanent seal. All items that appear to have been tampered with will be rejected.
Canteen:	Contracted company, which sells items to Individuals at PSH.
Vendor:	The company that an item has been purchased from (not a mailing/shipping company). A vendor cannot be a family member and the item cannot be handled or touched by the purchaser, only the vendor (See suggested vendor list - Attachment B).

Note: Revisions are indicated in all print which is Bold and Underlined.

(Continued)

RECEIVED

MAY 19 2008

STATE OF CALIFORNIA
OFFICE OF THE
ADMINISTRATOR
PATTON STATE HOSPITAL

- | | |
|--|---|
| By Choice Incentive Store: | This store carries state purchased items, which can be purchased by Individuals we serve with earned By Choice points. The items carried in this store are in compliance with this directive. |
| Individual's Clothing & Property Card: | This card (MH 5269) lists all the non-consumable personal property that an Individual served has in their possession on the unit. All property cards are kept in a separate binder in the Nursing Station of each unit. |

CONTRABAND ITEMS:

3. Any item that constitutes a safety or security concern is considered contraband and can be denied or confiscated. Any item or article of property that is considered contraband may be disposed of including items which:
 - Poses a serious threat to the security of the hospital.
 - Are ordinarily never approved for possession or admission into the hospital.
 - May be, or has been, authorized for possession at one time, but which is prohibited for possession when excessive quantities present a health, fire, or safety hazard.
 - Is not on the allowable list or approved as an exception to the list.
4. Any item or article in excess of the maximum quantity permitted or which is received or obtained from an unauthorized source is contraband. The disposition of the item shall be designated by the Individual as follows:
 - Sent to a forwarding address at Individual's expense
 - Donated to Volunteer Services by the Individual
 - Destroyed.
5. Individuals shall not buy, sell, trade, or gift property with or to other Individuals receiving treatment at PSH. If found with property identified as belonging to another, said property will be confiscated and the WRT of the owner of record shall evaluate how the transfer of property occurred and may return the item to the owner of record or dispose of it as follows:
 - 5.1. Any item found with an Individual, which is not documented on the Individual's Clothing and Property Card (MH 5269), and not identified as belonging to another Individual will be deemed as Unidentified Contraband. The item shall be submitted to Patient Property for storage as Unidentified Contraband and disposed of within one (1) year in accordance with State Administrative Manual (SAM) regulations.
 - 5.2. If an Individual contests such confiscation, they may submit written request for review to the Clinical Administrator within ten working days of the date of confiscation.
 - 5.2.1. Unit staff responsible for MH 5269 documentation will be asked to respond, if applicable, and an investigation by a Special Investigator or other appropriate personnel may be required.
6. Each Program shall establish a unit policy regarding Individuals use of state equipment to access their personal media sources (e.g., Individual showing personal DVD on unit television).
7. Items made of or including glass, with the exception of eyeglasses and nail polish, shall not be permitted.
8. Any item, which contains metal or volatile parts will be allowed only in accordance with guidelines as listed in Attachment A.
9. If photos are received through the mail, they will be screened by the unit staff. No Polaroid pictures will be allowed to come in through the mail.
10. Items requiring refrigeration after opening will not be accepted through the mail and will be automatically returned to sender. These items must be purchased from the Canteen. Friends and families of Individual may place orders by calling the following number 909-862-0654 or 800-401-6968. Orders from the Canteen may also be placed on-line at mycarepack.com.
11. The following are considered to be contraband food items: homemade items, alcohol-based food items, and nuts in shells (exception: sunflower seeds in shells).

RECEIPT OF PERSONAL PROPERTY, LETTERS AND PACKAGES:

12. All items sent to an Individual must be received from an approved source (vendor, family/friend, the Canteen or another Department of Mental Health State Hospital) as designated in Attachment A.
 - 12.1. Packages will not be accepted in the Visiting Center. Visitors may not bring items to the mailroom for delivery to an Individual.
13. All incoming and outgoing letters to and from Individuals (see exception below) may be opened and inspected for contraband by staff. All incoming oversized and bulky letters shall be considered to be packages.
 - 13.1. Exception: WIC 5358 (LPS) Individuals have the right to receive unopened correspondence, which will be opened in front of staff.
14. All packages shall be opened and searched/inspected in the Hospital Package Room prior to going to Individual. If a package comes with postage due it will automatically be returned to the sender (No COD).
15. Items, which are mailed to the Individual in a glass or metal container (e.g. coffee and tobacco) will be transferred into plastic container by the Package Room staff. Items that come in allowable packaging will be left intact and not transferred into plastic containers.
16. Personal property of value (radio, tape player, jewelry, etc.) will be engraved, when possible, with the Individual's PSH number, by unit staff at the time it is received on the unit.
17. All non-consumable property shall be listed on the Individual's Property Card (PSH 7313).
18. For items which are valued at \$100.00 or more the Individual shall sign a "Lost/Damaged Personal Property Liability Waiver" form (PSH 7355 - see Attachment D) prior to possession of the item.
 - 18.1. If an Individual is a Conservatee then the waiver must be signed by the Individual's Conservator.
 - 18.2. If an Individual refuses to sign the waiver the item will be returned to sender.
 - 18.3. Once the Individual signs the waiver the original waiver will be sent to the Business Manager II (Hospital Administrator's Office) and a copy will be given to the Individual.

PROPERTY RECEIVED BY MAIL:

19. When packages for Individuals served are received by mail the PSH Package Room staff shall list the item(s) (Allowable/Needs Review Property or Contraband Property) on the Individual's Property/Contraband Disposition Record (PSH 7130 - revised 09/06 - Attachment F).
 - 19.1. Free/Demo items which are received with an ordered item and which are on the allowable list (Attachment A) are not considered contraband and may be given to the Individuals served.
20. The Package Room staff shall then remove the pink and goldenrod copies of the PSH 7130 for tracking purposes and attach the rest of the PSH 7130 to the bag of property.
21. See Attachment H for processing procedures for property received by mail.
22. Contraband Item(s) shall be processed as designated (on the PSH 7130) by the Individual served (e.g.: Return to Sender, Donate, Destroy, or Forward).
23. When medical devices (e.g., eyeglasses, hearing aids, dentures and prosthesis) are received subsequent to admission, the Package Room Staff shall list the item(s) on the PSH 7130 and send the item(s) along with the PSH 7130 to Medical Services.
 - 23.1. The devices will be sent to Medical Services and distributed through the appropriate medical physician.
 - 23.2. The medical Physician shall document on the PSH 7130 the date the item(s) was delivered to the Individual's Unit and have the Individual served/Unit Staff sign for the item(s) on the PSH 7130.
 - 23.3. The white copy of the PSH 7130 shall be placed in the Individual's medical record, the green copy shall be given the Individual and the yellow copy shall be returned to the Mailroom.
 - 23.4. The item shall be listed on the Individual's Property Card (PSH 7313)
24. When an item(s) is received which is not included on the Allowable List (Attachment A) and is considered to be Contraband the Package Room staff shall list the item(s) on the PSH 7130 as Contraband.

- 24.1. If the Individual served requests the exception process they shall initial the PSH 7130 and the Unit Supervisor will initiate the process (See Attachment H).
 - 24.1.1. If the Individual served requests the item(s) to be returned to sender or forward to another address the item(s) will be mailed at their expense.
25. If after 30 days the Mailroom has not received the PSH 7130 back from the Unit Supervisor they shall contact the Unit Supervisor inquiring as to the status.
 - 25.1. If the Individual served does not respond as to how they wish the item(s) to be processed the item(s) will be destroyed or donated to a charitable organization.

EXCEPTION PROCESS:

26. Within 7 calendar days of the Individual's request for the item(s) to go through the exception process the ID Team shall review the request for exception, submit a recommendation (document on the PSH 7130), and forward the request (PSH 7130) to the Program Director.
27. The Program Director will submit a recommendation (document on the PSH 7130) within 7 calendar days of receipt of the request and forward the PSH 7130 to the Clinical Administrator. The decision will be documented on the PSH 7130.
28. Clinical Administrator will review the recommendations within 7 calendar days of receipt of the request and make the final decision (documented on the PSH 7130) and will then forward the PSH 7130 to the Mailroom.
- 28.1. Justification for denial shall be documented on back side of Medical Record copy of PSH 7130.
29. The mailroom will then distribute the copies as designated on the PSH 7130. If the item(s) is denied the item(s) will be returned to the sender at the Individual's expense (See Attachment H).
30. If the item(s) are approved as an exception the mailroom staff will process the item(s) and include necessary Liability Waivers (See Attachment H).
- 30.1. The Clinical Administrator shall maintain a list of all approved exceptions.
- 30.2. The Program Director will maintain a list of all approved exceptions for his/her program and a copy will be provided to each unit. When an Individual transfers to another program this information will be provided to the receiving Program Director.

RECEIPT OF PERSONAL PROPERTY UPON ADMISSION:

31. Upon Admission to the hospital the Admission staff will physically and visually inspect all property and inventory and record all property on the Admission Patient's Property/Contraband Inventory form (PSH 7155A). Property shall be sent with the Individual served to assigned unit or sent to storage as designated on Attachment C.

CONTRABAND FUNDS:

32. All currency (paper money) and coins in excess of \$15.00 found with an Individual will be deemed contraband and confiscated:
33. Unit staff confiscating contraband funds will issue a receipt to the Individual indicating "Contraband Funds". Funds will be designated as one of the following:
 - Identified Contraband Funds: funds belong to the Individual but are in excess of allowed amount or in the form of currency (paper money).
 - Unidentified Contraband Funds: Unknown as to the source.
 - Identified Funds: Received from a legitimate outside source.
34. If an Individual contests such confiscation, they may submit written request for review to the Clinical Administrator within ten working days of the date of confiscation.
- 34.1. If it is established that the funds legitimately belong to that Individual said funds will be designated as "Identified Funds" and deposited in the Individual's account.

35. "Unidentified Contraband Funds" will be deposited in an account so designated and shall be remitted to the state in accordance with the policies, laws, and regulations set forth in the Government Code, State Administrative Manual, and the Welfare and Institutions Code.
36. If funds are received from outside the hospital and designated as "Identified Funds", the Trust Officer will contact the party identified by the Individual as the source of funds. Said party will be informed of hospital policy and will be requested to deposit any future funds for said Individual in accordance with hospital procedures. If party wishes the "Identified Funds" to be returned they must make a request in writing to the Trust Office.
37. Funds considered to be contraband in the Visiting Center will be confiscated by a California Department of Corrections and Rehabilitation (CDCR) Visiting Officer.
 - 37.1. The CDCR Visiting Officer shall send a receipt to the Individual and to the Trust Office, through the hospital mail, designating the funds as "Unidentified Contraband Funds". All confiscated cash will be hand delivered to the Trust Office by a CDCR officer.
 - 37.2. The Trust Office will attempt to contact the source of the "Unidentified Contraband Funds". The funds will be held in suspense until proper disposition is made in accordance with this directive. Response must be received within 10 working days of the attempted contact.
 - 37.3. Any Individual not reporting or giving proper information may consider said funds to be "Unidentified Contraband Funds" which will be "seized," and placed in the appropriate state fund in accordance with the appropriate laws.

STORAGE OF PERSONAL PROPERTY ON THE UNIT:

38. Non-perishable food must not exceed in quantity or package size that which will be stored in a one cubic foot locker assigned to the Individual. Small quantities of perishable food may be stored in the unit refrigerator provided for Individuals' use. All items stored in a unit refrigerator must be labeled with name and date.
39. All items (except for food items – see above), which are permitted to be kept in the Individual's possession, must be neatly and safely contained within the Individual's assigned locker.
 - 39.1. All Individuals are responsible to store their possessions neatly and safely in their locker.

PROCEDURES FOR ACCESSING ITEMS IN PATIENT PROPERTY STORAGE ROOM:

40. Individuals may submit a Request For Access To Stored Property (PSH 7356 – See Attachment E) to receive allowed items from the Patient Property Storage Room /Trust Office Vault to the Unit Supervisor. A Liability Waiver (PSH 7355) must be completed and attached to the PSH 7356 for those items, which are valued at \$100.00 or more.
 - 40.1. The Unit Supervisor shall evaluate the request (e.g. WRT review for a controlled items) and submit their recommendation to the Program Director.
 - 40.2. The Program Director shall approve or deny the request.
 - 40.3. If the request is approved the Unit Supervisor/designee shall then go to the Patient Property Storage Room or Trust Office, inspect the item(s) for contraband, sign for the item (PSH 7356) and deliver the item(s) to the Individual requesting the item(s).
 - 40.3.1. Items stored in the Trust Office Vault must have approval of the Trust Office prior to release.
 - 40.3.2. The Unit Supervisor must to also bring the Medical Record copy of form D'S-1208 to the Trust Office for release of these requested items.
 - 40.4. The Individual shall then sign the PSH 7356 for the item(s) when they receive them.
 - 40.5. Once the PSH 7356 is completed then the copies may be distributed as designated on the form.
 - 40.6. The item shall be added to the Individuals Property Card (PSH 7313).

ACCESS TO CONTROLLED ITEMS:

41. All newly admitted Individuals shall not have access to any controlled items (see Attachment A) for the first sixty (60) days after admission.

- 41.1. At that time the WRT shall meet with the Individual and evaluate the Individual's ability to safely access controlled items.
- 41.2. The WRT shall then authorize which controlled items the Individual will be allowed to access. A statement as to what items the Individual can have access to shall be placed on the Individual's Cardex (e.g.: Access to all controlled items, or Access to only the following controlled items— list specific items).
- 41.3. An exception may be made for Individuals who have been transferred from another state hospital or have returned from court.

RESPONSIBILITIES FOR SUPERVISED/CONTROLLED ITEMS:

42. Refer to Attachment A for specific information related to allowable items, the method of entry into the facility, whether a particular item requires staff supervision or may be used/possessed directly by the Individual without supervision.
43. Controlled Items: Those items that must be reviewed by the WRT prior to purchase or access.
44. Supervised Items: Materials and tools will be used under the direct supervision of treatment staff.
 - 44.1. Direct supervision requires that staff observe the use of said item(s).
 - 44.2. It shall be the responsibility of the employee to assure that all items are used for the purpose intended (not being altered), accounted for, and secured after their use (e.g., shavers, adapters, and battery chargers).
45. Controlled Items: Any item(s) or tool(s), which may only be issued to the Individual after authorization by the Treatment Team and Program Director. It shall be the responsibility of each employee to take appropriate action if items are:
 - Not being used for the purpose intended
 - Are being altered by the Individual
 - Not accounted for
 - 45.1. It is the Individual's responsibility to use the item appropriately.
 - 45.2. These Controlled items shall be checked out to the Individual and are to be returned to the nursing station prior to the hour of sleep on the same day.

TEMPORARY STORAGE AND FORWARDING INDIVIDUAL'S PROPERTY:

46. When an Individual served goes to court or is admitted to an acute care facility in the community the Individual's property, which is on the unit, shall be boxed up and sealed for temporary storage.
 - 46.1. This process is not for Individuals who will be returning the same day.
47. A Request to Store or Forward Property form (PSH 7360 - revised 06/06 - Attachment G) shall be completed along with a completed Withdrawal of Clients Funds form (MH 5216), which gives authorization to cover cost of postage; will be obtained and attached to the PSH 7360 and the box(es).
 - 47.1. There are only two box sizes approved for this purpose - 12 x 9 x 5 1/2 (#8115-726-0005-3/00) or 12 x 9 x 5 1/2 (#8115-726-0002-8/00) - both can be ordered from the Main Warehouse.
48. The Individual's Property Card shall be placed in the box (or one box if multiple boxes are used) and the box(es) shall then be sent to Patient Property and shall be temporarily stored until the Individual returns to PSH or is discharged.
49. Once the Individual returns to PSH the Admissions Suite staff shall notify the Patient Property staff as to what unit the Individual is being assigned to. Patient Property staff shall then send the temporarily stored property (if any) to the assigned unit along with a copy of the PSH 7360.
50. The Individual will then sign the PSH 7360 when they receive the property and the unit staff will send the signed copy of the PSH 7360 back to Patient Property.
51. The Individual's Property Card will be placed in the new units Property Card Binder.

LONG TERM STORAGE AND FORWARDING INDIVIDUAL'S PROPERTY:

52. When an Individual wishes to store excess property or forward property out, the property shall be placed in a box (see above for size) and sealed.
53. A Request to Store or Forward Property form (PSH 7360 - revised 06/06 - Attachment G) shall be completed along with a completed Withdrawal of Clients Funds form (MH 5216), which gives authorization to cover cost of postage, will be obtained and attached to the PSH 7360 and the box(es) sent with the box to the mailroom/Patient Property.
54. The Trust Office will reimburse the Mailroom for the cost of postage from the Individual's Trust Account, if available.
55. The Social Worker or the Individual served will correspond with relatives or friends advising them to anticipate receipt of property.

PROCEDURES FOR ADDING ITEMS TO THE ALLOWABLE PROPERTY/CONTRABAND LIST:

56. Requests to add items to the current allowable items list may be submitted by an Individual, family member, or employees to the Clinical Administrator (C.A.).
 - 56.1. Individuals should submit their recommendations via their Central Council representative.
 - 56.2. Family member should submit their recommendations via AMI - Patton.

<u>CROSS-REFERENCE:</u>	A.D.#11.02	Individual's Rights & Responsibilities
	A.D.#14.01	Fiscal Affairs
	A.D.#14.02	Patient Property
	A.D.#15.38	By Choice System
